

KACSO Fall Conference Mayetta, Kansas October 19th, 2018

LEGISLATIVE UPDATE FROM THE 2018 SESSION

HB 2458

Counterfeit Currency; Assault and Battery of a LEO; Mistreatment of a Dependent Adult or Elder Person; THC Possession; Escape from Custody; Expanded SB 123 Program Eligibility

COUNTERFEIT CURRENCY (new crime)

doing any of the following with the intent to defraud:

- Making, forging, or altering any note, obligation, or security of the United States
 - severity level 7 nonperson felony if the total face value is \$25,000 or more
 - severity level 8 nonperson felony if the total face value is less than \$25,000
- Distributing, or possessing with the intent to distribute, any obligation or security of the United States knowing the obligation or security has been so made, forged, or altered, with the same penalties as above; or
- Possessing any paper, ink, printer, press, currency plate, or other item with the intent to produce any counterfeit note, currency, obligation, or security of the United States, as a severity level 9 nonperson felony.

HB 2458 Cont'd

Mistreatment of a Dependent Adult or Elder Person

- The bill merges the two crimes into a single crime of mistreatment of a dependent adult or an elder person. Under previous law, the two crimes included the same list of acts against their victims, with the exception of the act of committing mistreatment of a dependent adult by infliction of physical injury, unreasonable confinement, or unreasonable punishment of the adult. Thus, under the bill, this act also becomes a crime when committed against an elder person.
- The bill also adds an additional act applicable to all victims: taking the personal property or financial resources of a victim for the benefit of the defendant or another person by taking control, title, use, or management of the personal property or financial resources of a victim through a violation of the Act for Obtaining a Guardian or Conservator.

HB 2458 Cont'd

Mistreatment of a Dependent Adult or Elder Person

- The bill amends the penalty provisions of the crime where the penalty level depends on the monetary value of the personal property or financial resources to increase the ceiling for a misdemeanor from less than \$1,000 to less than \$1,500. The corresponding floor for the lowest felony penalty (severity level 7) and ceiling for an exception for multiple previous offenses is changed to \$1,500.
- The definition of "elder person" for purposes of the crime is changed from 70 years of age or older to 60 years of age or older.
- In the first degree murder statute, the bill adds the crime to the list of inherently dangerous felonies for purposes of the felony murder rule.

HB 2458 Cont'd

Possession of THC

The bill amends penalties for possession of THC so that a first offense is a class B nonperson misdemeanor, a second offense would be a class A nonperson misdemeanor, and a third or subsequent offense is a drug severity level 5 felony.

How should prior Possession of THC convictions be scored in criminal history?

- The classification of a prior conviction will be made in accordance with the law applicable at the time of the current crime of conviction. See *State v. Keel*, 302 Kan. 560, 357 P.3d 251 (2015).
- For example, previous First Possession of Marijuana convictions would be classified as a B misdemeanor. Thus, it would not be scored for criminal history purposes.
- Also, previous Second Possession of Marijuana convictions would be scored as Class A non-person misdemeanor.

State v. Keel Cont'd

- *Keel* applies to other crimes as well.
- Failure to Register (drug offender) is now a NPF.
- If a defendant has a prior FTR (drug offender) that was a PF at the time, and he commits a new crime, how should the prior FTR be classified?
- Pursuant to *Keel*, the classification of a prior conviction will be made in accordance with **the law applicable at the time of the current crime of conviction.**
- Thus, the prior FTR would need to be classified as a NPF.

Expanded SB 123 Program Eligibility (HB 2458 Cont'd)

- The attempt was to expand eligibility to include offenders convicted of a severity level 4 possession offense with a criminal history of E or lower who have not been convicted of certain other crimes.
- However, due to a technical error, the distribution statute was not included for eligibility.
- Because of this, SL4 crimes cannot be eligible at this time.
- KSSC is working on a technical fix for the 2019 legislative session.

House Sub for SB 374

Driving Under the Influence

- States the legislative intent with regard to comparability of an out-of-jurisdiction offense to a Kansas offense.
- Within both DUI and Commercial DUI statutes, the bill amends the one-month imprisonment enhancement for convicted persons who had one or more children under the age of 14 in the vehicle at the time of the offense. The bill specifies the enhancement applies to "any person 18 years of age or older" when one or more children **under the age of 18** are in the vehicle at the time of the offense.
- Repeals the Crime of Test Refusal.

Journal Entry- Page 2 SENTENCE IMPOSED

SECTION IV. SENTENCE IMPOSED
Guideline Range Imposed: Aggravated Standard Departure – COMPLETE SECTION V
2. Prison Term: KDOC months (including enhancement sentence) (Enter months above then check one of the following)
** or Underlying with KDOC Drug Trtmnt Prog. (min. 120 days)
☐ Enhancement Sentence- Drug with Firearm: ☐ 6 months ☐ 18 months (K.S.A. 21-6805(g))
Ballistic Resistant Material: 30 months (K.S.A. 21-6804(t))
Off-grid Crime:
☐ Life - Minimum 15 yrs. ☐ Life - Minimum 20 yrs. ☐ Hard 25 ☐ Hard 40 ☐ Hard 50 ☐ Life without Parole ☐ Death Penalty ☐ Per K.S.A. 21-6620, 21-6623 or 21-6627, if guidelines sentence greater than mandatory minimum months.
3. Postrelease Supervision Term: 12 months 24 months 36 months 60 months (sex offense) - COMPLETE SECTION V Lifetime Postrelease (K.S.A. 22-3717(d)(1)(G)(i) Lifetime Parole / Electronic Monitoring (K.S.A. 21-6604(r))
4. Felony DUI: 3rd D.U.I. 4th & Subs. D.U.I.
* No Probation or Postrelease allowed on <u>or</u> after July 1, 2011.
Jail Sentence: months days Release is authorized after jail service of months days hours
Assigned to work release (K.S.A. 21-6604(a)(11)) or House Arrest:monthsdays hours
Post-Imprisonment Supervision (PIS) of 12 months supervised by: Court Services Community Corrections (check one)
Additional one month jail if child <18 in vehicle (K.S.A. 8-1567(c)) (include in total)

PSI

Face sheet and Supplemental Face Sheets

DNA Sample Taken (K.S.A. 21-2511): Yes No 2. IF OFFENDER WAS UNDER 18 YEARS OF AGE WHEN CRIME(S) WAS COMMITTED AND WAS TRIED AS AN ADULT, OFFENDER WAS: Adjudicated as an Adult Under K.S.A. 38-2347 Automatically Considered Adult Because of a Prior Felony 3. Names of Co-Defendants, if any: Property of Counsel Prior to Sentencing: Waived Orally Waived in Writing Prosecuting Attorney: Prosecuting Attorney: Date of Guilty Plea or Judgment: Date of Sentencing: Presentence Investigator: (Please Print) Date Assigned: Date Submitted: Presentence Investigator's signature:	IT Drug Offense (Indicate statute for controlled substance): 65-4105
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House Sub for SB 374 Cont'd

Driving Under the Influence

Comparing out of state offenses

The bill states the Legislature's intent with regard to comparability of an out-of-jurisdiction offense to a Kansas offense shall be liberally construed to allow comparable offenses, regardless of whether the elements are identical to or narrower than the corresponding Kansas offense, for the purposes of determining a person's criminal history and that the Legislature intends to include, but does not limit such offenses to, convictions under specified statutes in Missouri, Oklahoma, Colorado, and Nebraska, as well as a Wichita municipal ordinance.

DUI (House Sub for SB 374 Cont'd.) Comparing out of state convictions

For the purposes of determining whether an offense is comparable, the following shall be considered:

- (1) The name of the out-of-jurisdiction offense;
- (2) The elements of the out-of-jurisdiction offense; and
- (3) Whether the out-of-jurisdiction offense prohibits similar conduct to the conduct prohibited by the closes approximate Kansas offense.

HB 2439 "Caitlin's Law"

Involuntary Manslaughter- DUI; Aggravated Battery- DUI

The bill amends the definition of the crime of involuntary manslaughter to include the killing of a human being committed in the commission of, or attempt to commit, or flight from driving under the influence of alcohol, drugs, or both (DUI) while:

(1) In violation of any restriction imposed on such person's driving privileges for DUI;

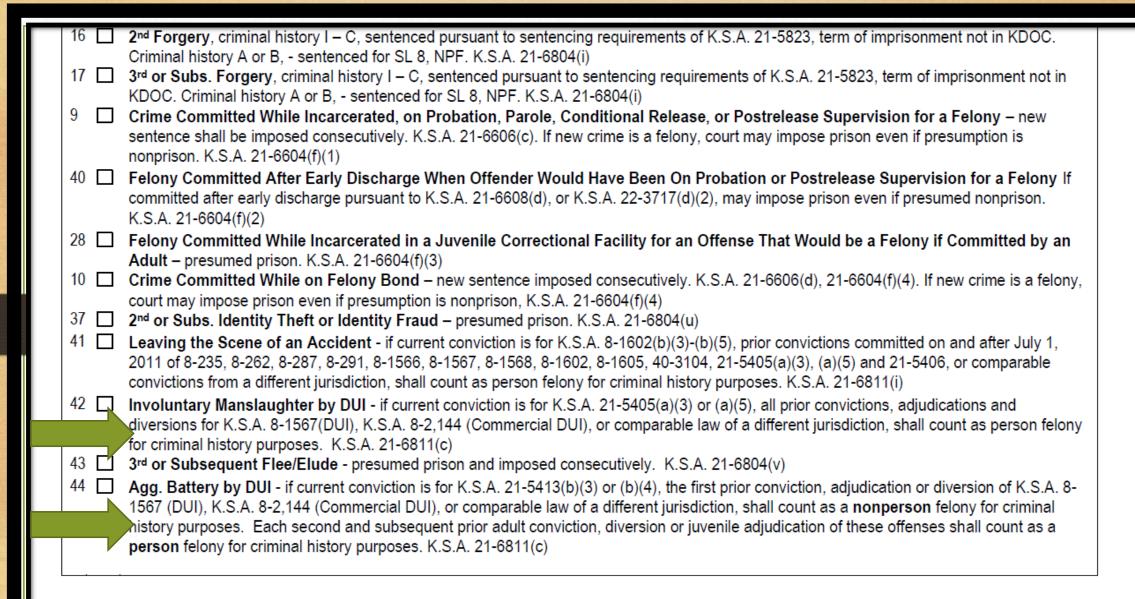
(2) The person's driving privileges are suspended or revoked for DUI; or

(3) The person has been deemed a "habitual violator," as defined in KSA 2017 Supp. 8-285, including at least one DUI violation.

• This is a severity level 3 person felony.

• In addition, the bill amends the definition of aggravated battery to include causing great bodily harm or disfigurement of another person while DUI under the same circumstances as those described above. Violation of the aggravated battery provision is a severity level 4 person felony.

Offenses are among those which juvenile records or files may not be expunged.



PSI Special Rules Supplement

Involuntary Manslaughter by DUI - if current conviction is for K.S.A. 21-5405(a)(3) or (a)(5), all prior convictions, adjudications and diversions for K.S.A. 8-1567(DUI), K.S.A. 8-2,144 (Commercial DUI), or comparable law of a different jurisdiction, shall count as person felony for criminal history purposes. K.S.A. 21-6811(c)

3rd or Subsequent Flee/Elude - presumed prison and imposed consecutively. K.S.A. 21-6804(v)

Agg. Battery by DUI - if current conviction is for K.S.A. 21-5413(b)(3) or (b)(4), the first prior conviction, adjudication or diversion of K.S.A. 8-1567 (DUI), K.S.A. 8-2,144 (Commercial DUI), or comparable law of a different jurisdiction, shall count as a nonperson felony for criminal history purposes. Each second and subsequent prior adult conviction, diversion of these offenses shall count as a person felony for criminal history purposes. K.S.A. 21-6811(c)

Special Rule 41

Journal Entry- Special Rules Supplement PSI- Special Rules Supplement

Leaving the Scene of an Accident - if current conviction is for K.S.A. 8-1602(b)(3)-(b)(5), prior convictions committed on and after July 1, 2011 of 8-235, 8-262, 8-287, 8-291, 8-1566, 8-1567, 8-1568, 8-1602, 8-1605, 40-3104, 21-5405(a)(3), (a)(5) and 21-5406, or comparable convictions from a different jurisdiction, shall count as person felony for criminal history purposes. K.S.A. 21-6811(i)

House Bill 2567 Criminal History- Comparable Offenses

- Amends statute governing determination of criminal history to replace references to "another state" with "the convicting jurisdiction."
- Clarifies the comparable offense to be used for comparison for misdemeanor crimes in another jurisdiction is the offense under the Kansas Criminal Code in effect on the date the current crime of conviction was committed, and standardize terminology.
- The bill also adds a provision that if a crime is not classified as either a felony or misdemeanor in the convicting jurisdiction, the comparable offense under the Kansas Criminal Code in effect on the date the current crime of conviction was committed shall be used to classify the out-of-state crime as either a felony or misdemeanor.
- If Kansas does not have such comparable offense, the out-of-state crime shall not be used in classifying the offender's criminal history.

Criminal History: Comparing out-of-state convictions to Kansas offenses

What does "comparable" mean?

"For an out-of-state conviction to be comparable to an offense under the Kansas criminal code, the elements of the out-of-state crime cannot be broader than the elements of the Kansas crime. In other words, the elements of the out-of-state crime must be **identical to, or narrower than**, the elements of the Kansas crime to which it is being referenced." See *State v. Wetrich*, 307 Kan. 552, 412 P.3d 984 at 991 (2018).

State v. Wetrich, 307 Kan. 552, 412 P.3d 984 (2018).

- Defendant had a prior Missouri burglary conviction
- Court found that the prior conviction had to be classified as a nonperson felony because two elements of the Missouri statute were broader than the Kansas burglary statute. See *State v. Wetrich*, 307 Kan. 552, 412 P.3d 984 (2018).
- "For an out-of-state conviction to be comparable to an offense under the Kansas criminal code, the elements of the out-of-state crime cannot be broader than the elements of the Kansas crime. In other words, the elements of the out-of-state crime must be identical to, or narrower than, the elements of the Kansas crime to which it is being referenced."
- Missouri's statute required a broader mental state element because the Kansas crime required the entry be done with the specific intent to commit a felony, theft or sexual battery, therein, whereas, the specific intent required for the Missouri crime is that the burglar's purpose is to commit **any** crime.
- In the Kansas crime, the structure involved must be a dwelling whereas in Missouri, the structure was more broadly defined to include, in addition to a structure where any person lives, such non-dwelling places as a business, government office, school, church, roller-skating rink, or bus station.

House Bill 2581 Giving a False Alarm

The bill renames the offense as "making an unlawful request for emergency service assistance" and its definition is amended to include transmitting or communicating false or misleading information in any manner to request emergency service assistance, including law enforcement, fire, medical, or other emergency service knowing at the time there is no reasonable ground for believing assistance is needed.

House Bill 2581 (Cont'd) Giving a False Alarm

Continues to be a class A nonperson misdemeanor, except: including false information that violent criminal activity or immediate threat to a person's life or safety has or is taking place continues to be a severity level 7 nonperson felony,

• except in the following circumstances added by the bill: If bodily harm results from the response by emergency services, the offense is a severity level 6 person felony; great bodily harm resulting from the response by emergency services is a severity level 4 person felony; and death resulting from the response by emergency services is a severity level 1 person felony.

House Bill 2581 (Cont'd) Giving a False Alarm

The bill clarifies use of an electronic device or software to alter, conceal, or disguise the source of the request or the identity of the person making such request continues to be a level 10 nonperson felony. The bill provides that it shall not be a defense that the person who suffered bodily harm, great bodily harm, or death contributed, or others contributed, to such person's harm or death. Persons who make an unlawful request for emergency service assistance may also be prosecuted for any form of homicide.

House Bill 2145

Criminal Use of Weapons

Amends the definition of "criminal use of weapons" by adding possession of a firearm by any of the following:

- Fugitives from justice;
- Aliens illegally or unlawfully in the United States;
- Persons convicted of a misdemeanor for a domestic violence offense within the past five years; and
- Persons subject to court orders restraining them from harassing, stalking, or threatening an intimate partner, child, or child of an intimate partner.

House Bill 2523

Law Enforcement Training Act

Unlawful Sexual Relations- Law Enforcement Officer

- Offender is a LEO and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 or older who is interacting with such LEO during the course of a traffic stop, custodial interrogation, an interview in connection with an investigation or while the LEO has such person detained.
- SL5PF

House Bill 2488 Automated Sales Suppression Devices

New crime

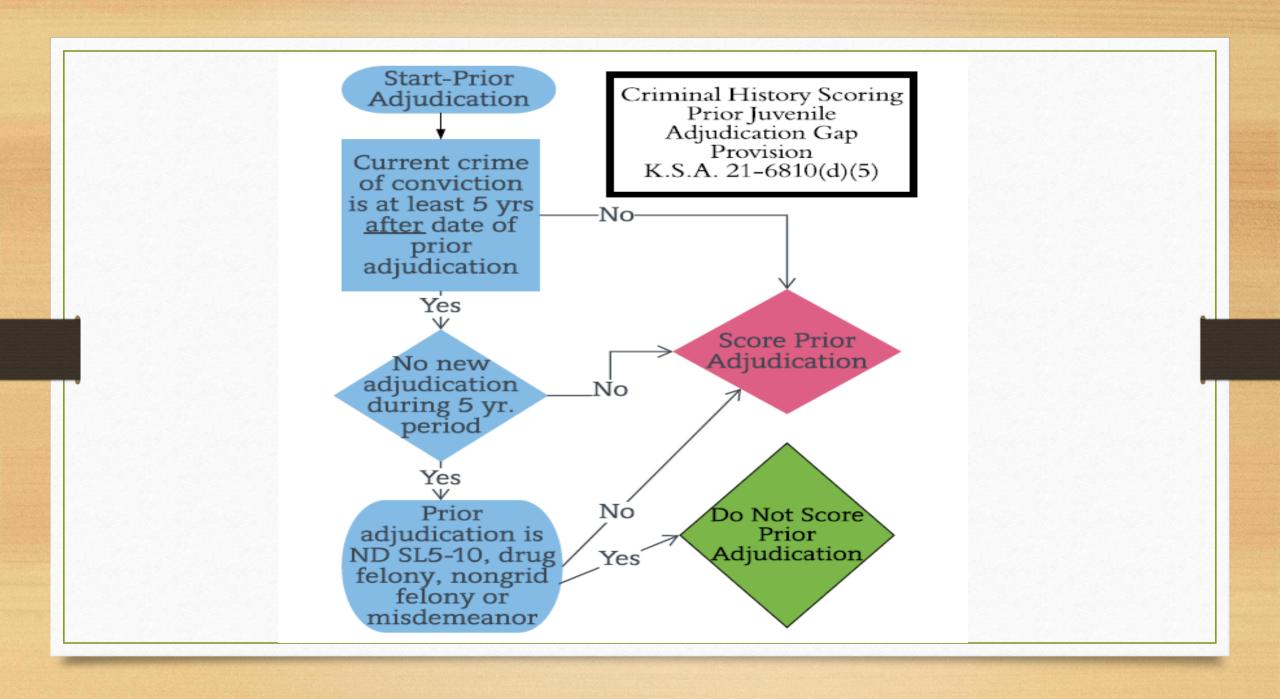
Knowingly selling, purchasing, installing, transferring, manufacturing, creating, designing, updating, repairing, using or possessing automated sales suppression devices or phantom-ware

SL7NPF

Juvenile Gap Provision

K.S.A. 2017 Supp. 21-6810(d)(5), a juvenile adjudication will not be considered and scored if:

- (A) the current crime of conviction is committed at least five years after the date of a prior adjudication;
- (B) the offender has no new adjudications or convictions during such five-year period; and
- (C) the juvenile adjudication is for an offense that would be a nondrug severity level 5 through 10 felony, drug felony, nongrid felony, or misdemeanor if committed by an adult.



Changes in PVJE

Case No.	(PAGE 2)
SECTION III. VIOLATION SANCTION HISTORY - ONLY MARK	K IF PREVIOUSLY IMPOSED
Prior "Quick Dip" county jail sanctions imposed (K.S.A. 22-3716(c)(1)(B)): 1st days imposed by Supervising officer Court 2nd days imposed by Supervising officer Court 3rd days imposed by Supervising officer Court 4th days imposed by Supervising officer Court 5th days imposed by Supervising officer Court	☐ 120 days in KDOC (K.S.A. 22-3716(c)(1)(C)) ☐ 180 days in KDOC (K.S.A. 22-3716(c)(1)(D)) Comments (including other jail sanction history):
6th days imposed by _ Supervising officer _ Court 7th days imposed by _ Supervising officer _ Court 8th days imposed by _ Supervising officer _ Court 9th days imposed by _ Supervising officer _ Court SECTION IV. DISPOSITION OF THIS VIOLATION HEARING	
Disposition: No Violation Determined The court finds sufficient evidence	ence and grounds to show and orders:
Violations Determined, Probation Not Revoked But:	
☐ Probation Conditions Modified? ☐ Yes ☐ No (If Yes, describe of Ordered to Community Corrections Supervision	conditions in box #4)
Probation Extended for months	
Drug Treatment for up to 18 months. K.S.A. 21-6824, ("SB123")	
☐ Violation Sanctions Ordered: Quick Dip: ☐ 2 day ☐ 3 day KDO	C Prison Sanction: 120 days 180 days
County Jail days (up to 60) (may not be imposed at same time	ie as other sanctions - K.S.A. 22-3716(c)(11))
☐ Violation Determined, Probation Revoked and Defendant Ordered	to Serve:
Original Sentence Modified Sentence months	
Court revoked because defendant absconded or committed ne	w crime. (K.S.A. 22-3716(c)(8)) – state reasons in box #3.

Case No.	D.								(PAGE 3)					
SECTION IV.	DISPOSI	TION OF T	HIS VIC	LATION	HEAR	ING (c	ont.)							
^{5.} Incarceration Revocation Da	+ Cred	it Awarded W Total Nur	hile on Pr		Current			ude any ł		ation sancti TENCE BEG	_			
Court remaind Defendant Enter dates (mm) by the court. (atta	to report to C	County Jail on	the f credit po	day of			, 20							varded
*Location-	From:	To:	=	Days	□ A	□N	*Loc	ation-	From:	To:	=	Days [□ A [N
*Location-	From:	To:	=	Days	□ A	□N	*Loc	ation-	From:	To:	=	Days [□ A [N
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*Location-	From:	To:	=	Days	□ A	□N	*Loc	ation-	From:	To:	=	Days [□ A [N
*Enter appropriate letters to indicate the type of location where credit may have been earned: J=Jail TL=Treatment (Locked) TU=Treatment (Unlocked) RL=Residential (Locked) RU=Residential (Unlocked) HA=House Arrest														
6. Prior Case(s)	to Which the	e Current Sei	ntence is	to Run Co	ncurre	nt or Co	nsecu	tive:						
Case No.				Misd		Felony		Coun	ty	Concur	rent 🗌	or Consecu	tive 🔲	
Case No.				Misd		Felony		Coun	ty	Concur	rent 🗌	or Consecu	tive 🔲	
Case No.				Misd		Felony		Coun	ty	Concur	rent 🗌	or Consecu	tive 🔲	

Resources

- https://sentencing.ks.gov/
 - Forms
 - Updated PSI
 - Updated JE
 - Updated PVJE
 - Explainers for PSI, JE, and PVJE
 - Desk Reference Manual
 - Francis.givens@ks.gov

